IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL, CIVIL JURISDICTION

WRIT PETITION NO.1254 OF 2006

Delta Airlines Employees Association.Petitioners

Vs.

The Union of India & Anr...Respondents

Mr.Rahul Nerlekar, for the Petitioners

Ms. Ritu Singh with Mr. K.B. Rao, for the

respondent NO.1.

Mr.K.S. Bapat with Mr. J.K. Desai, for

Respndent No2.

CORAM: **F.I. REBELLO &**

MRS.V.K.TAHILRAMANI, JJ.

DATE: 15TH JUNE,2006

P.C.

. Rule. Heard forthwith.

2. The petitioner Union and the employer had recorded minutes before the Conciliation Officer on 12th December, 1996. There was a settlement in respect of various demands except two demands (i) Seniority and (ii) the demand of 3% deduction from the arrears payable to all employees towards union fund. The Appropriate Government on failure report submitted to it was pleased to refer only the issue of closure of Delhi office with the issue of inter se

seniority as recorded in the order of reference. The Appropriate Government has not referred the demand of 3% deduction from the arrears payable to all employees though both the parties had agreed to the same. The order also does not disclose any reason for rejecting as required under Section 12(5) of the I.D. Act. In fact from the terms settled before the Conciliation Officer, for all purposes the reference ought to have been in terms of Section 10A of the I.D. Act.

. On behalf of the Respondent No.1 learned Counsel points out that the old settlement has expired and a new settlement has been entered into and that the employer cannot be called upon to pay the arrears on behalf of the employer to the Union at this stage,and that would not be an industrial dispute, as contended by the petitioners herein.

3. Having heard both the parties we are clearly of the view that it was not open to the Appropriate Government, Respondent NO.1 not to have made the reference after both the parties had arrived at an agreement before the Conciliation Officer in respect of Item (B) of the settlement which reads as under:-

> "The union demanded a deduction of 3% from the arrears payable to all employees towards the Union Fund. The Management was not agreeable to the same."

Normally the matter ought to have been referred to the appropriate Government for reconsideration. In the instant case however, considering that the parties themselves before the Conciliation Officer were agreeable to refer the dispute.It is made clear that it will be open to the employer if they are entitled to raise the issue that the dispute as raised by the petitioners is not an Industrial dispute and that the dispute no longer survives.

. In our opinion the ends of justice would be met if the respondent NO.1 is directed to amend the reference already made on 10th November, 2003, to also include the dispute as raised by the Union of deduction of 3% from the arrears payable to all employees towards the Union funds. The respondent No.1 is directed to take appropriate action within a period of six weeks from today. Rule made absolute accordingly. No order as to costs.

(**F.I. REBELLO, J)**

(**MRS.V.K.TAHILRAMANI, J).**